

be ordered in a case where the defendant was out of jurisdiction at the time of the issue of the writ if the evidence satisfies the court that he went out of the jurisdiction to evade service. *Re Urquhart*." (5)

In this particular case the applicant's affidavit has not shown to my satisfaction that (a) the first defendants were not aware of the proceedings; and (b) that they were not evading service. I am of the opinion that the substituted service on the first defendants were in the circumstances of this case a proper service and that judgment obtained in default of appearance of the first defendants was regular and cannot be said to be irregular merely because the applicant alleges, which is disputed, that the first defendants had at all material time lived and are still living in Singapore.

Alternatively the applicant urges the court to exercise its discretion to set aside the judgment on the grounds that the affidavit has disclosed a good defence on the merits. I have considered these grounds and two of them are, I think, without substance. I do not consider that the applicant's allegations (a) that he signed as guarantor on the understanding that it was a pure formality, and (b) that the plaintiffs' manager had informed him that no further proceeding would be taken against him and hence no appearance was entered, sufficient to induce me to set aside the judgment.

The question is whether the remaining allegations as set out in 3(b) and (c) above constitute sufficient grounds for setting aside the judgment. For myself I must confess that on the face of the conflicting allegations in the affidavit I am unable to arrive at a decision without ascertaining the full facts. The plaintiff in his affidavit denies that the first defendant had at any time repaid a said sum of \$5,000 and alleges that no defence was raised by the applicant when an A.R. Registered Notice was sent to him on 18th May, 1967, demanding the said sum of \$5,000. Judging from the plaintiffs' affidavit it appears clearly that although there is a denial that the first defendant ever repaid the sum of \$5,000, the plaintiffs categorically admitted that the notice of demand required the payment of the sum of \$5,000. In the light of the applicant's contention that he stood guarantee only for the sum of \$5,000 it becomes necessary to consider whether sufficient ground exists for me to exercise my discretion and set aside the judgment. In doing so I shall give due regard to the fact that judgment was entered for the sum of \$5,607.61 which, if the contention of the applicant is correct, is in excess of the sum guaranteed and for which the applicant may not be legally liable to pay.

In these circumstances it seems to me that justice would be done if the judgment is set aside and the applicant is allowed to defend.

A I allow the application and set aside the judgment. Costs to the plaintiffs.

Application allowed.

Solicitors: N. Ramachandran; Dato' Balwant Singh & Co.

B

MOHAMED REPIN v. LIM YU KEE

[F.C. (Wee Chong Jin C.J., Tan Ah Tah F.J. and Winslow J.) November 28, 1968]

[Singapore — Federal Court Civil Appeal No. Y32 of 1968]

C

Damages — Eyes — Total blindness — Whether allowance should be made for extra-help — Consideration to be given to risk of overlapping as between heads of compensation.

Negligence — Highway — Duty of driver of motor vehicle emerging from minor road to path of traffic on a major road — Halt sign at junction.

D

In this case as a result of a collision between a motor van and a motor bus at the junction of Tanjong Katong Road and Dunman Road, the appellant who was riding a motor cycle was hauled down by the motor van. The learned trial judge found that the driver of the motor van was negligent and to blame for the accident, as he had failed to stop at the halt line at the junction of Dunman Road and Tanjong Katong Road and had gone into the path of traffic on a major road. Even if the driver of the bus had seen the van in Dunman Road coming towards the junction he was justified in assuming that the van would halt at the halt sign. The learned judge found that the accident was due solely to the negligence of the driver of the motor van. He awarded \$84,000 as damages and in doing so rejected the submission for the plaintiff that a sum should be awarded for a servant for the plaintiff. The plaintiff appealed and the appeal was only as to quantum of damages.

E

Held, dismissing the appeal: (1) in the circumstances there was evidence to show that the appellant was at least partially unable to look after himself and was and would remain in need of some additional help;

F

(2) however, having regard to the principles regarding overlapping and having regard to the quantum of the award, the amount assessed for the additional expenses likely to be incurred in providing the appellant with some extra help should not be added to the figure awarded as the sum awarded represented a fair and reasonable compensation as a whole to the appellant for the injuries suffered by him.

G

Cases referred to:—

H

(1) *Brooks v. Graham* (1964) unreported English Court of Appeal case.

(2) *Tan Heng Lin & Anor. v. Tay Choon But* [1968] 1 M.L.J. xliii.

(3) *Fletcher v. Autocar and Transporters Ltd.* [1968] 3 W.L.R. 743.

I

In the court below *H.E. Cashin* appeared for the plaintiff, *G. Abisheganaden* for the first defendant and *Goh Heng Leong* for the 2nd and 3rd defendants. On July 26, 1968 the following judgment was delivered by —

Chua J.: The plaintiff's claim is for damages for personal injuries and loss suffered by him and caused by the negligence of the first

defendant and by the negligence of the second defendants and the second defendants' servant or agent the third defendant or alternatively by the negligence of one or other of the defendants in the driving of their respective vehicle.

The case of the plaintiff is that on the 31st December, 1965, he was riding a motor cycle along Tanjong Katong Road going in the direction of Mountbatten Road. When he was at the junction of Tanjong Katong Road and Dunman Road there was a collision at the junction between a motor van driven by the first defendant and a motor bus driven by the third defendant, the servant or agent of the second defendants, and then the said van collided with him.

There is no dispute that there was a collision between the van and the bus as a result of which the van collided with the motor cycle.

The plaintiff's evidence was shortly this. Before the accident he was already blind in the left eye. On the 31st December, 1965, at about 2.15 p.m. he was riding a motor cycle along Tanjong Katong Road going in the direction of Mountbatten Road. It was drizzling. As he was approaching the junction of Tanjong Katong Road and Dunman Road there was no vehicle in front of him going in the same direction but there was a bus coming from the opposite direction. When he saw the bus he did not see any vehicle on his right. Just as he was entering the junction he heard a bang which came somewhere in front of him and he saw a van spin round and coming from his right towards him. When the van spun round it hit him and he fell from his motor cycle and that was all he remembered. As a result of the accident he lost the sight of his right eye and he is now totally blind.

The first defendant's evidence was shortly this. On that day he was driving the van along Dunman Road coming from Old Airport Road going towards Joo Chiat. Miss Kao was sitting next to him. It was raining moderately at that time. As he reached the junction of Dunman Road and Tanjong Katong Road he slowed down and halted at the Halt line. He looked to his right and he saw a bus coming from his right along Tanjong Katong Road; the bus was about 70 to 80 feet away. He then looked to his left, which was clear of traffic. He said: "The bus was far away, I put on my first gear and went ahead. When I reached the crown of the road the bus hit the rear of my vehicle at a very high speed. My vehicle was swung round to my right and I lost consciousness."

Miss Kao's evidence was shortly this. It was drizzling at about that time. The van halted at the junction for a little while and then proceeded after a few seconds and then she had the impression of something red and big rushing at the van, it was from the right. After

A that she knew nothing more because she became unconscious.

The third defendant's evidence was shortly this. That day he was driving the bus along Tanjong Katong Road in the direction of Geylang. The day was bright although it was raining. Before the bus reached the junction of Tanjong Katong Road and Dunman Road there was a bus stop. He stopped at the bus stop to allow passengers to alight and board the bus. He then proceeded on towards the junction. He was then travelling 3 feet from the side of the road. On arrival at the mouth of the junction he looked to his left and right along Dunman Road. He did not see anything moving along Dunman Road on either side. There was no vehicle at the Halt line in Dunman Road on his left or right. He looked ahead towards Geylang and moved on and somewhere in the junction the bus was involved in an accident with a van. He said:—

"The accident happened in this way (demonstrates with models.) When I had gone $\frac{1}{4}$ into the junction the van came from my left across in front of my bus. The van came like lightning across the front of my bus and came into contact with the bus; the offside body of the van came into contact with the front of the bus; when the vehicles came into contact both vehicles were moving. I just looked to my left and I saw the van which was 2 or 3 feet from my bus, that was just before the impact. At the time of impact I was travelling at 14 to 15 m.p.h. and I was in third gear."

Mohamed Isa bin Haji Amin, Corporal 508, who was attached to the Traffic Branch of the police in December, 1965, visited the scene of the accident and took measurements and drew a sketch plan and examined the three vehicles involved in the accident. His plan showed (and there is no dispute as to this) that Dunman Road at its junction with Tanjong Katong Road was subject to a Halt sign in either direction and there were Halt lines there. Clearly of the two roads Tanjong Katong Road was the major road. The corporal found that all the damage to the van was on its right side, all down the side, except for a dent in the back bumper, which no doubt was caused when the rear of the van hit the road signpost on the other side of the crossing before coming to a stop. The corporal found that the damage to the bus was confined to the front of the bus. Both the front headlights glass were smashed. The damage to the motor cycle was slight — right side of the handle was broken, right side foot-rest bent upwards the front mudguard was bent to the left.

The defendants pleaded that the accident to the plaintiff was caused by or contributed to by the negligence of the plaintiff and the particulars of the plaintiff's negligence were given as:—

- "(a) Failing to keep any or any proper lookout;
- (b) Riding at an excessive speed in the circumstances;
- (c) Being a person blind in one eye failing to take extra precautions at a busy cross-road;

- (d) Failing to give any warning of his approach;
- (e) Failing to stop, slow down, swerve or otherwise avoid the accident."

Let it be said at once that there is no evidence that the plaintiff had been in any way negligent.

The main question for consideration is, who was to blame for the collision between the bus and the van?

Of the two versions of the accident I prefer the version given by the third defendant. I think the third defendant was a truthful witness and on the balance of probabilities I find that the accident occurred in the way described by the third defendant. The collision took place when the bus had travelled three quarters into the junction while the van was only one quarter of the way across. The bus must have entered the junction well before the van did so and at the time the third defendant entered the junction he did not see the van on his left in Dunman Road and he was quite right to proceed to cross the junction and to assume that any traffic coming from his left in Dunman Road would stop at the Halt line. There is no doubt that the van did not stop at the Halt line but proceeded at speed to try and beat the traffic which was on a major road. Clearly therefore the first defendant was to blame.

Even accepting the story of the first defendant to be true that he stopped at the Halt line, nevertheless, he was to blame for the accident as he should have stopped there a bit longer to allow the bus, which was travelling on a major road and coming from his right, to pass before attempting to cross the junction. Instead of doing that he took a risk and crossed the junction in the face of the oncoming bus.

It was submitted by counsel for the first defendant that the third defendant was negligent in that he was going at an excessive speed in the circumstances and he failed to keep a proper lookout.

I accept the evidence of the third defendant that he was in third gear and travelling at 14 to 15 m.p.h. when he was crossing the junction, which in the circumstances was not excessive. It was the van which was travelling fast, otherwise it would not have ended up in the way it did after the impact, knocking down a road signpost before coming to a stop with its rear over a drain.

Can it be said that the third defendant was negligent in not seeing the van in Dunman Road some way back from the Halt line? I cannot take such a view. Even if the third defendant had seen the van in Dunman Road coming towards the junction he was justified in assuming that the van would halt at the Halt line. As Lord Justice Willmer said in the case of *Brooks*

v. Graham and Berrington ⁽¹⁾ (a 1964 Court of Appeal Case which is unreported and a copy of the judgment was put in by consent by counsel for the second and third defendants):—

"Assuming, therefore, that Mr. Berrington had seen the Dormobile van at the time when he reached the cross-roads, he would have been right to go on as he was going so as to get across; he would have been right to assume that the Dormobile would stop at the Halt line and allow him to do so. It appears to me that this is a feature of the case which the learned judge has overlooked. He has treated the case as though it were one of a collision at an uncontrolled cross-road, or a cross-road subject only to a Slow sign. It seems to me that, when one is dealing with a cross-road subject to a Halt sign, wholly different considerations apply. If a vehicle on the major road is to approach such a cross-road in such a way that it can stop dead if a vehicle on the minor road fails to observe the Halt sign, it would mean that it would have to slow down to little more than walking pace. That would have the effect for all practical purposes of bringing traffic on the major road to a standstill. That, as I said earlier, would represent a wholly unrealistic view of the requirements of present day traffic conditions."

I find, therefore, that the accident to the plaintiff was due solely to the negligence of the first defendant.

I now come to deal with the question of quantum of damages.

The plaintiff was employed as an usher/collector at the Ruby cinema at a salary of \$128 per month plus overtime. On the average he earned \$30 per month overtime. The plaintiff is now totally blind and the possibility of his getting a job is very remote and it appears to me that there will be a total loss of future earnings for the plaintiff. The plaintiff at the date of the accident was 32 years old and in the ordinary course of events he might have expected to continue earning for at least another twenty-three years but I do not think that his earnings would likely to vary greatly for the rest of his working life if he can work. His future loss of earnings talking in round figures would be \$160 per month. I think it would be right to allow fifteen years purchase of the plaintiff's monthly loss as the figure for loss of future earnings. I assess that figure at the sum of \$20,000.

The accident to the plaintiff resulted in fractures of the right zygomatic bone and of the base of the left fifth metacarpal bone but he has made a full recovery. I assess damages for these injuries at \$4,000.

As I have said the plaintiff, who was already blind in the left eye from childhood, lost the sight of his other eye as a result of the accident and is now totally blind. I have now to assess the damages to be awarded for the loss of amenities. Counsel for the plaintiff submitted that total blindness was worse than a case of paraplegia and cited the case of *Tan Heng Lin & Anor. v. Tay Choon But*, ⁽²⁾ a paraplegia case, where the court awarded the sum of \$80,000 for

loss of amenities. In my view paraplegia cases are much worse than total blindness. Counsel for the plaintiff also submitted that the plaintiff would require someone to look after him and urged that a sum should be awarded for a servant for the plaintiff as was awarded in the case of *Tan Heng Lin v. Tay Choon But*. In my view a blind person is not in need of a servant like a paraplegic. Taking all the circumstances into consideration and applying the best consideration which I can to the matter, I think the proper sum to award the plaintiff for loss of amenities is \$60,000.

I therefore assess general damages at \$84,000.

The plaintiff appealed against that part of the above judgment on the quantum of general damages.

FEDERAL COURT.

H.E. Cashin for the appellant.

G. Abisheganaden for the respondent.

Cur. Adv. Vult.

Winslow J. (delivering the judgment of the court): This is an appeal against that part of the judgment of Chua J. on the quantum of general damages awarded to the appellant who, before the accident, was already blind in his left eye from childhood but, as a result of the accident, lost the sight of his other eye and became totally blind.

At the date of the accident, he was 32 years old and employed as an usher/collector at a cinema at a salary of \$128 per month plus an average monthly overtime of \$30. He was unmarried. He was educated in Malay up to standard six and could read both Romanised Malay and Jawi.

The trial judge awarded him General Damages in the total sum of \$84,000 made up as follows:—

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|---|----------|
| 1. Loss of future earnings at \$160 per month on a purchase of 15 years: | \$20,000 |
| 2. Fractures of the right zygomatic bone and of the base of the left fifth metacarpal bone: | \$ 4,000 |
| 3. Loss of amenities: | \$60,000 |

The present appeal is against the inadequacy of the quantum of the award on the ground that the trial judge failed to make any provision for a servant for the appellant on whose behalf it was contended that he was unable to look after himself for the rest of his life.

Dr. Wong Kin Yip, an Ophthalmic Consultant, advanced the opinion that if things were arranged for him, he could find his clothes and put them on himself and that in a simple house, he could learn to find his way about but that it would be dangerous for him to go into the streets

although he could learn to find his way. The appellant himself gave evidence that he lived with his mother who is quite old although he did not know exactly what her age was and that she cooked for him and put the food in front of him to eat and that she also washed his clothes. He also stated that he could dress himself given the clothes. There was also evidence that facilities for helping the blind do not exist here to the same extent as they do in England, although there may be some institutions for the blind or other debilitated persons here which might be prepared to take him on though not as a matter of right on his part.

The sole question we have to decide is whether provision should have been made for the additional expenses likely to be incurred in employing a servant to look after the appellant for the rest of his life, and, if so, whether the quantum awarded should be increased.

The trial judge considered the submission that such provision should be made as was made in the case of *Tan Heng Lin & Anor. v. Tay Choon But* ⁽²⁾ a case of a paraplegic who was completely paralysed from the chest downwards, but concluded that, in his view, a blind person was not in need of a servant like a paraplegic. It is now contended on behalf of the appellant that he was wrong in so deciding and in holding that no such provision should be made.

Counsel for the respondent drew our attention to the majority decision of the English Court of Appeal in *Fletcher v. Autocar And Transporters Ltd.* ⁽³⁾ in support of the proposition that, where a judge assesses damages under four separate heads, he would be wrong in considering the four heads of assessment of damages as separate heads of compensation for they were only aids in arriving at a sum which was fair and reasonable compensation for the injuries suffered and were inter-related and often overlapped. In that particular appeal, Lord Denning M.R. gave two reasons for thinking that the trial judge's conclusion, in failing to revise what he himself called a "truly daunting figure" which he reached by adding all the sums awarded under the four heads of assessment, was erroneous, as follows:—

"In the first place, I think he has attempted to give a perfect compensation in money, whereas the law says that he should not make that attempt. It is an impossible task. He should give a fair compensation. . . .

In the second place, I think that the judge was wrong to take each of the items separately and then just add them up at the end. The items are not separate heads of compensation. They are only aids to arriving at a fair and reasonable compensation."

The learned Master of the Rolls then went on to deal with the considerable risk of error in just adding up the items. That was the risk of overlapping as between the different heads. He did not think that it would be fair, for

example, in the case of a bachelor aged 56, unlikely to marry, to award him, in addition to the full costs of accommodation at an infirmary for the rest of his days (less a small proportion for board and lodging) and an amount which would be fair compensation for his loss of amenities, to give him his future salary in full with no deductions. He then went on to say:—

"Another way of looking at it is to say that he should not be given both the full cost of accommodation at Cheadle Royal and also his full salary; for that again would mean that he would be saving his full salary and spending nothing. In any way there is an overlap if he is given his full salary without deductions."

Counsel for the respondent accordingly contended that a similar risk of overlapping existed in the present case in that the award of \$84,000, which was reached by the judge after adding together the three items we have mentioned earlier, was a sufficiently fair and reasonable compensation as a whole for the injuries suffered even if one were to make some provision for extra help.

At one stage of the hearing of this appeal it did not seem sufficiently clear from the arguments submitted by counsel for either side that there was any authority for regarding provision for a servant in circumstances such as these as a separate head of assessment but the case to which we have already referred makes it quite clear that additional expenses likely to be incurred for the rest of his life by the plaintiff by reason of the accident such as extra help in the house (whilst he is at home) and the cost of his accommodation at an institution for the rest of his days, subject to a small deduction for board and lodging, can be taken into account under a separate head of assessment in a case where a person has been so incapacitated, wholly or otherwise, as to compel him to incur such expenses, provided that some deduction is made from the assessment as to loss of future earnings because otherwise he would be saving his full salary and spending nothing.

On the evidence before the trial judge it seems to us that a sufficiently strong case was made out for holding that the appellant herein has, since the accident, required and will, for the rest of his days, require some extra help at home and on the streets though not perhaps to the same extent as a paraplegic. The latter, as in the case of *Tan Heng Lin & Anor. v. Tay Choon But* to which reference has already been made, would require a full-time servant but, despite the tragic handicaps to which a totally blind person must necessarily be exposed, he is by no means in the same completely helpless position as a paraplegic.

The appellant, at present, lives with his mother who attends to his needs at home and will, no doubt, continue to do so as long as she

A is herself sufficiently physically fit. There is no evidence of her actual age or state of health but, doing the best we can on the known facts, it is not unreasonable to expect that she will be able to be of some help to him for the next 10 or 15 years at least. One should also bear in mind that, during the course of time, better facilities for persons like the appellant may become available and that, should the need arise, he should find little difficulty in adjusting himself to his changed living conditions and, by developing his other faculties, learn to do more things for himself, including the acquisition of a marriage partner perhaps in his present affluent position as a result of the award, the interest on which alone far exceeds his monthly earnings.

In all the circumstances, we are satisfied that there was evidence to show that the appellant is at least partially unable to look after himself and is and will remain in need of some additional help though not to the extent of requiring a full-time servant for the rest of his days like a paraplegic. We accordingly consider that the appeal is well grounded so far as this head of assessment is concerned.

Having regard, however, to the quantum of the award already made we do not consider that any amount assessed for the additional expenses likely to be incurred in providing the appellant with some extra help should necessarily be added to the figure already reached by the trial judge, who added together the items for loss of future earnings, for the fractures, and for loss of amenities, so as to increase the award as a whole to any higher figure. In our judgment, having regard to the principles regarding overlapping which we have dealt with earlier, the sum of \$84,000 awarded by the trial judge represents a fair and reasonable compensation as a whole to the appellant for the injuries suffered by him and we accordingly do not propose to interfere with that award. The appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Murphy & Dunbar; Abisheganaden & Co.*

PUBLIC PROSECUTOR v. LEONG CHEE MOON & ANOR.

[A.Cr.J. (Abdul Hamid J.) December 2, 1968]
[Seremban—Criminal Appeal No. 32 of 1967]

Criminal Law and Procedure — Trial — Charge of having ammunition without a licence — Onus of proof of existence or non-existence — Arms Act, 1960, s. 3(1).

Evidence — Licence — Onus to prove non-existence of — Prima facie evidence.

This was an appeal against the acquittal of the respondents on a charge of having custody of ammuni-